

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

## DIVISION OF ST. THOMAS AND ST. JOHN

JESSE DAVIS AND JOSEPH DAVIS, JR.,

Plaintiffs,

V.

Civ. No. 95/1995

COMMUNITY PSYCHIATRIC CENTERS OF FLORIDA, )

INC. a/k/a COMMUNITY PSYCHIATRIC CENTERS, )

INC. d/b/a CPC PALM BAY HOSPITAL,

Defendant.

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OPINION OF THE COURT

FINCH, J.

THIS MATTER comes before the Court on defendant's motion to

dismiss, motion for change of venue, and motion to strike prayer for attorneys' fees. Plaintiffs opposed the motions. The parties presented oral argument on May 9, 1996. For the reasons discussed below, the Court will grant defendant's motion for change of venue.

## I.

Plaintiffs filed a complaint on June 7, 1995 and an amended complaint on June 30, 1995. In response, defendant filed together a motion to dismiss, motion for change of venue, and motion to strike prayer for attorneys' fees, as well as an accompanying memorandum of law.<sup>1</sup> Plaintiffs filed a response to the motions.<sup>2</sup>

In the two count amended complaint, plaintiff alleged (1) breach of contract (Count I) and (2) an action sounding in tort (Count II). Plaintiffs are a father, Joseph Davis, Jr. ("plaintiff father"), and his minor son, Jesse Davis ("plaintiff son"). They

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<sup>1</sup> Defendant also filed with the other motions a motion to stay discovery. That motion is moot.

<sup>2</sup> In addition, plaintiffs sought to quash defendant's motions on the grounds that defendant's counsel was unlicensed in the Virgin Islands and had failed to seek *pro hac vice* admission. Defendant withdrew the motions because they were filed by an attorney who was not licensed to practice in the Virgin Islands. Local counsel for defendant refiled the same motions. The Court granted the original attorney's motion for *pro hac vice* admission.

Plaintiffs failed to refile their response after defendant refiled its motion. Technically, plaintiffs' response predates defendant's motion. Plaintiffs' original response, however, addressed the substance of defendant's motions. The Court will analyze those arguments.

are residents of the Virgin Islands. Defendant is incorporated in Florida and is a resident of that state. The Court has jurisdiction based on diversity of citizenship and the amount in controversy exceeds the statutory requirement.

Plaintiff son suffered from depression and drug dependency, two psychological diagnoses which defendant allegedly possessed special expertise in treating. Plaintiff father agreed to relocate his son from the mental ward at St. Thomas Hospital to a hospital run by defendant.<sup>3</sup>

Plaintiff father contended that he placed his minor son in defendant's facility in Florida in reliance upon both the representations made by defendant about the safety of its facility and the terms of the contract between defendant and the Government of the Virgin Islands ("the Government").<sup>4</sup> One of the terms of the contract provided by plaintiff as being a representation of the contract between defendant and the Government stated that the "Contract shall be governed by the laws of, and shall remain within

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<sup>3</sup> Defendant received \$300 per day for plaintiff son's treatment. Plaintiff father paid an additional \$300 per month for "the ordinary maintenance and care" of plaintiff son while at defendant's facility. (Am. Compl. ¶ 12).

<sup>4</sup> Plaintiff father alleged that he sent his son to defendant's facility "in reliance upon the expressed and implied representation of the defendant that they could provide a decent, safe and fully secured facility" for plaintiff son. (Am. Compl. ¶ 10).

the jurisdiction of the courts of, the United States Virgin Islands." (Plfs.'s Resp. Exh. A. at 4).

At the time of the alleged incident from which the instant case arose, the son was at defendant's residential care facility under twenty-four hour care to receive treatment allegedly pursuant to a contract between defendant and the Government of the Virgin Islands. The incident took place on January 6, 1993 when another minor being cared for at defendant's facility allegedly assaulted plaintiff son while both minors were in a lounge area of the facility. The other minor purportedly had "known violent propensities." (Am. Compl. ¶ 16).

Plaintiff required treatment at a hospital in Florida. His two week hospital caused him to incur substantial medical costs. Plaintiff father further alleged that two of defendant's employees assured him that defendant would handle the medical bills incurred as a result of plaintiff son's injury.

Plaintiffs contended that they were intended third party beneficiaries of the contract.<sup>5</sup> Plaintiffs claimed that defendant breached its contractual duty to plaintiffs father and son by

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<sup>5</sup> Plaintiffs alleged that they "were the intended third party beneficiaries of any formal or informal contract or agreements between the defendant and the [Government of the Virgin Islands] as to the care, safety, treatment and well being both physically and psychologically of Jesse Davis." (Am. Compl. ¶ 12).

permitting the purportedly violent minor to assault plaintiff son. Plaintiffs claimed a further breach of contractual duty based on defendant's alleged failure to provide plaintiff son "immediate medical evaluation and attention so as to determine promptly the nature and extent of his physical injuries." (Am. Compl. ¶ 17).<sup>6</sup>

Plaintiffs further alleged in Count II that defendant owed a special duty of care to plaintiff son. They alleged that defendant breached that duty "when it failed to adequately secure and protect" plaintiff son against the assault from a fellow patient.<sup>7</sup> ( Am. Compl. ¶ 26). They further alleged that defendant's negligence was the proximate cause of plaintiff son's injuries. (Am. Compl. ¶ 27). They contended that it was "reasonably foreseeable" that such injuries would result from the "circumstances of the conditions" at the facility "which identified but failed to segregate youthful violent patients with known criminal propensities from the non-violent patients with no background of criminal behavior or juvenile delinquency." (Am. Compl. ¶ 27). Plaintiffs father and son both claimed various losses as a result of defendant's alleged breach of

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<sup>6</sup> Plaintiffs alleged that the assault occurred at approximately 7:15 p.m. and that plaintiff son was not taken to the hospital until approximately 10 p.m. that same night.

<sup>7</sup> Plaintiff also alleged that defendant was negligent in (1) failing to provide proper supervision of patients; (See Am. Compl. ¶ 28); (2) failing to properly train personnel, (See Am. Compl. ¶ 29); and (3) "failing to provide immediate diagnosis and treatment, (Am. Comp. ¶ 29).

contract and negligence.

## II.

At the outset, the Court will address defendant's motion for change of venue as the Court concludes that it would be appropriate for a transferee court to address the remaining motions should this Court grant defendant's motion for change of venue. Defendant sought a change of venue pursuant to 28 U.S.C. § 1404(a).<sup>8</sup> (Def.'s Mot. at 9). Section 1404(a) provides that "[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a) (1988).

As a threshold matter, this Court must determine whether the District Court of the Virgin Islands is a district court within the meaning of § 1404(a).<sup>9</sup> For the reasons discussed below, this Court concludes that the District Court of the Virgin Islands has the power to act as a transferor and transferee court pursuant to § 1404(a).

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<sup>8</sup> Plaintiff directed this Court's attention to V.I. CODE ANN. tit. 5, § 4905 (1967). Plaintiff suggested that the local venue statute should also guide this Court's analysis. (Plfs.'s Resp. at 5). Defendant made its motion pursuant to § 1404(a). This Court based its analysis in the instant case on 28 U.S.C. § 1404(a).

<sup>9</sup> At the hearing, the Court invited the parties to submit memoranda of law on the issue of the applicability of § 1404 to the District Court of the Virgin Islands. Both parties submitted their positions on the issue. (See Plfs.'s Post Hr'g Mem.; Def.'s Resp. Plfs.'s Post Hr'g Mem.).

Several courts have addressed whether the District Court of the Virgin Islands has the power to transfer or receive cases. Commentators and courts concluded that the District Court of the Virgin Islands is to be considered as a district court for the purposes of § 1404 transfers. See *Hawksbill Sea Turtle v. Federal Emergency Management Agency*, Civ. No. 96-650, slip op. at 3 (D.D.C. May 10, 1996); *Abdulghani v. Virgin Islands Seaplane Shuttle*, 749 F. Supp. 113, 113 n. 1 (D.V.I. 1990); *CAT Aircraft Leasing, Inc. v. Cessna Aircraft Co.*, 650 F. Supp. 57, 60 n.3 (D.V.I. 1986) (concluding that §§ 1404(a) and 1406(a) apply to the District Court of the Virgin Islands); *Dickson v. Hertz Corp.*, 559 F. Supp. 1169, 1177 n.8 (D.V.I. 1983) (noting the availability of transfer from the District Court of the Virgin Islands pursuant to § 1404); *Exporters Refinance Corp. v. Marden*, 356 F. Supp. 859, 860 (S.D. Fla. 1973) (construing the power of the District Court of the Virgin Islands to transfer pursuant to § 1404(a) as arising by implication); *Ferguson v. Kwik-Chek*, 308 F. Supp. 78, 80 (D.V.I. 1970); 15 CHARLES A. WRIGHT, *et al.*, FEDERAL PRACTICE AND PROCEDURE § 3845, at 340 n.1 (2d Ed. 1986)); but see *Hendricks v. Alcoa Steamship Co.*, 206 F. Supp. 693, 695-96 (E.D. Pa. 1962). Despite recognizing that, on its face, § 1404 does not include the District Court of the Virgin Islands, courts concluded that the District Court of the Virgin Islands has the power to transfer cases to another district and to receive

transferred cases.<sup>10</sup> See *Hawksbill Sea Turtle*, Civ. No. 96-650, slip op. at 2-4; *Exporters Refinance Corp.*, 356 F. Supp. at 860; see also *Ferguson*, 308 F. Supp. at 79 (acknowledging that the District Court of the Virgin Islands is not a district court of the United States). Moreover, courts also recognized that they should "liberally construe[]" the doctrine of *forum non conveniens*, as embodied by § 1404(a). See *Hawksbill Sea Turtle*, Civ. No. 96-650, slip op. at 4; *Exporters Refinance Corp.*, 356 F. Supp. at 860.

In dicta in an unpublished opinion, the Court of Appeals for the Third Circuit addressed without deciding the issue of whether the District Court has the power to transfer pursuant to § 1404(a). *Abdullah v. AMR Corp.*, Civ. No. 95-7025, slip op. at 6-8 n.3 (3d Cir. May 15, 1995). It recognized that, "as a matter of policy," the District Court of the Virgin Islands should have the power to transfer.<sup>11</sup> *Id.* at 7.

This Court agrees with the rationale of those courts and

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<sup>10</sup> For the purposes of § 1404, the term "'district court' includes the United States District Court for the District of the Canal Zone." 28 U.S.C. § 1404(d) (1988). The section fails to specifically mention any other district court. See *id.*

<sup>11</sup> The court "suggest[ed] that a technical legislative correction be made to eliminate [a] possible glitch in the law" that might exclude the District Court of the Virgin Islands from being a district for the purposes of § 1404. *Abdullah v. AMR Corp.*, Civ. No. 95-7025, slip op. at 7-8 (3d Cir. May 15, 1995).



commentators that concluded that the District Court of the Virgin Islands has the power to transfer and receive cases pursuant to § 1404(a). Moreover, this Court concurs with the view that Congress intended to "integrate the District Court of the Virgin Islands into the federal judicial system, as nearly and completely as is possible, with that intended integration including the power to transfer pursuant to § 1404. See *Ferguson*, 308 F. Supp. at 80; see also *Hawksbill Sea Turtle*, Civ. No. 96-650, slip op. at 4; cf. *United States v. Charles*, 30 V.I. 143, 147 (D.V.I. 1994) (noting that the legislative history of the 1984 amendments to the Revised Organic Act of 1954 provided a "clear expression" of Congress's intent "to confer full jurisdiction of a district court of the United States on the District Court of the Virgin Islands"). Section 22(a) of the Revised Organic Act of 1954, as amended, provides that "[t]he District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of title 28, United States Code, and that of a bankruptcy court of the United States." 48 U.S.C. § 1612(a) (1987). Withholding the ability to transfer or receive cases pursuant to § 1404 would seem to run contrary to the broadening of power that Congress granted this Court by amending the Revised Organic Act of 1954 to make the District Court of the Virgin Islands like other district courts throughout the United States. Cf.

*Charles*, 30 V.I. at 148 (noting that the "primary intent of the modifications to our Organic Act was . . . [to] confer[] on the District Court . . . the jurisdictional attributes and 'institutional nature' of Article III courts.").

In keeping both with other courts that have held similarly and with the intent of Congress, this Court concludes that it has the power to transfer cases to other districts and to receive cases from other districts pursuant to § 1404. Consequently, this Court next will engage in an inquiry into whether this case is an appropriate one for transfer.

### III.

A court exercises broad discretion in determining whether to transfer a case to another district pursuant to § 1404(a). See *Plum Tree, Inc. v. Stockment*, 488 F.2d 754, 756 (3d Cir. 1973). In exercising that discretion, this Court initially must determine that the transferee district court is one where the action might have been brought. *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 24 (3d Cir. 1970), *cert. den.*, 401 U.S. 910 (1971); *Abdulghani v. Virgin Islands Seaplane Shuttle, Inc.*, 749 F. Supp. 113, 114 (D.V.I. 1990). At the time a plaintiff commences an action, "venue must have been proper in the transferee district and the transferee court must have had power to command jurisdiction over all of the defendants." *Shutte*, 431 F.2d at 24.

Where jurisdiction in a civil action is based solely on diversity of citizenship and the action involves a single defendant, the judicial district where the defendant resides is a district where the action "might have been brought." See 28 U.S.C. § 1391(a); 1404(a). In a state, such as Florida, "which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State." § 1391(c).

Defendant sought to have venue changed to the Middle District of Florida. Defendant contended that "as a Florida corporation, jurisdiction over this action also exists in the United States District Court, Middle District of Florida." (Def.'s Mot. at 9). Jurisdiction in the above-captioned action is based on diversity of citizenship. Defendant is incorporated in Florida and is a resident of that state. It is licensed by the State of Florida. Plaintiff alleged that the psychiatric facility owned and operated by defendant for children and youths was located in Palm Bay, Florida. (Am. Compl. ¶ 5). From the facts alleged and the arguments of the parties, this Court concludes that, for the purposes of venue, defendant is a resident of the Middle District of Florida.

Consequently, the Middle District of Florida is a district where the action might have been brought.

In addition to the requirement that the Court consider "convenience to the parties and witnesses" and the "interest of justice," commentators recommend and courts consider other factors. *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995). Amongst the factors that courts consider are the plaintiff's choice of venue; the location where the claim arose; convenience of the parties and the witnesses, particularly where a witness will not be available in another forum; the existence of records that cannot be produced in another forum; and judicial convenience and economy. *Id.*

Courts give considerable weight to a plaintiff's choice of forum. *Shutte*, 431 F.2d at 25. Plaintiff father and son selected the Virgin Islands as the forum in which to bring suit. They both reside here. Undoubtedly, pursuing this action in Florida will be inconvenient for them.

Similarly, the Virgin Islands is an inconvenient forum for defendant. Moreover, it is inconvenient for many witnesses involved in the instant case. The incident occurred in Florida. Defendant alleged that the other person involved in the incident and the witnesses, including eyewitnesses, were located in Florida. With the exception of any physician who may have treated plaintiff son upon his return to the Virgin Islands, all of the physicians and hospital

personnel who treated plaintiff son after the incident were in Florida. Defendant further alleged that medical documentation and other physical evidence is located in Florida.

Transferring this action to the Middle District of Florida will serve the interests of justice. This Court recognizes that plaintiffs may suffer inconvenience by having to pursue this action in Florida. In the instant case, other factors examined by this Court outweigh plaintiffs' choice of forum.

As a final matter, this Court will examine the relationship between the purported third-party beneficiary status of plaintiffs and the issue of whether the Court may transfer this case to another district. A forum selection clause binds a third-party beneficiary to whom it was reasonably foreseeable that a forum selection clause would apply. *Coastal Steel Corp. v. Tilghman Wheelabrator Ltd.*, 709 F.2d 190, 203 (3d Cir. 1983). Plaintiffs contended that they were third-party beneficiaries. They argued that this dispute should be governed by the courts of the Virgin Islands under whose jurisdiction the case should remain. Even were this Court to conclude that plaintiffs were third-party beneficiaries under the contract to whom it was reasonably foreseeable that the forum selection clause would apply, the forum selection clause would be but one factor in the Court's § 1404(a) analysis. See *Jumara*, 55 F.3d at 880. This Court concludes that factors that it examined militate against the Court

retaining this case in the Virgin Islands. Consequently, this Court transfers the above-captioned action to the Middle District of Florida. An appropriate order follows.

DATED this \_\_\_\_\_ day of September, 1996.

FOR THE COURT:

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HON. RAYMOND L. FINCH  
U.S. DISTRICT JUDGE

ATTEST: Orinn Arnold  
Clerk of the Court

BY: \_\_\_\_\_  
Deputy Clerk

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

JESSE DAVIS AND JOSEPH DAVIS, JR.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No. 95/1995
	)	
COMMUNITY PSYCHIATRIC CENTERS OF FLORIDA,	)	
INC. a/k/a COMMUNITY PSYCHIATRIC CENTERS,	)	
INC. d/b/a CPC PALM BAY HOSPITAL,	)	
	)	
Defendant.	)	
_____	)	

ORDER OF THE COURT
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FINCH, J.

THIS MATTER comes before the Court on defendant's motion to dismiss, motion for change of venue, and motion to strike prayer for attorneys' fees. For the reasons discussed in the Opinion of even date, this Court grants defendant's motion for change of venue and withholds ruling on defendant's other motions. It is hereby

**ORDERED** that the above-captioned action be transferred to the District Court for the Middle District of Florida.

It is **SO ORDERED**.

DATED this \_\_\_\_\_ day of September, 1996.

FOR THE COURT:

\_\_\_\_\_  
HON. RAYMOND L. FINCH  
U.S. DISTRICT JUDGE

ATTEST: Orinn Arnold  
Clerk of the Court

BY: \_\_\_\_\_  
Deputy Clerk

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